

REMARKS

Amendments to the Specification

The specification has been amended to address minor errors of a grammatical or typographic nature that were found by the Applicant's representative upon review. The paragraph starting at page 26, line 3 has been amended to replace "is" with "it" and "topsheet" with "hydrophilic zone." Support for the latter change may be found in the first sentence of the same paragraph, where the inventor refers to the position of the hydrophilic zone. The paragraph starting at page 28, line 17 has been amended to replace "hydrophobic" with "hydrophilic" in reference to the density of the composition. Support for this amendment may be found later in the same paragraph, where the inventor refers to specific densities for the hydrophilic composition. No new matter is added by the amendments. Accordingly, Applicant respectfully requests entry of these amendments.

Amendments to the Drawings

Figures 1 - 5 have been amended to correct minor errors of a typographical nature. Referring to the back waist region of the absorbent article, "Waste Back" has been replaced with "Waist Back" in all five figures. No new matter has been submitted by these amendments. Accordingly, Applicant respectfully requests entry of the amendments.

In the Claims

Claim 52 stands rejected under 35 U.S.C. § 112, second paragraph. Claims 1-12, 14-17, 19-22, 24-27, 29-44, 46-49 and 51-52 stand rejected under 35 U.S.C. § 102(b). Claims 13, 18, 23, 28, 45 and 50 stand rejected under 35 U.S.C. § 103(a). Claims 1, 10, 19, 29 and 33 are amended herein, and claim 53 has been added. Support for the amendments is found throughout the specification, claims and drawings, see in particular, page 24, lines 8-15, and page 26, line 3-page 28, line 16, as well as claim 10

and the drawings. No new matter is submitted by the claim amendments. Claims 1-53 are now pending in the application. Applicant respectfully requests entry of the amendments and reconsideration and allowance of the pending claims in view of the following remarks.

Rejection under 35 U.S.C. § 112, second paragraph

Claim 52 stands rejected under 35 U.S.C. § 112, second paragraph as being indefinite, because of the use of the trademarks TRITON GR-5M, TRITON X-200, TRITON X-100, and SILASTOL PST. Office Action, page 2. Applicant notes that these trademarked products are proprietary compositions. Applicant submits that the use of a trademark in a claim is not *per se* improper. The MPEP provides that “if a product to which the trademark refers is set forth in such language that its identity is clear, the examiners are authorized to permit the use of the trademark if it is distinguished from common descriptive nouns by capitalization.” See § 608.01(v). Further, the MPEP states “[i]f the trademark has a fixed and definite meaning, it constitutes sufficient identification unless some physical or chemical characteristic of the article or material is involved in the invention.” *Id.* Additionally, “sufficiency of disclosure must be decided on an individual case-by-case basis.” *Id.*

Here, Applicant believes that a case-by-case determination would reveal that the recitation of the aforementioned trademark names in claim 52 is appropriate under the circumstances and represents the proper use of a trademark. In particular, the specification identifies the manufacturers of these surfactants such that the substances would be readily obtainable by the public. See page 24, lines 1-6.

Accordingly, the claims reasonably apprise persons of ordinary skill in the art of the invention’s scope. Therefore, Applicant respectfully requests that the Examiner reconsider and withdraw this claim rejection.

Rejection under 35 U.S.C. § 102

A. Roe, et al. (5,998,695)

Claims 1-12, 14-17, 19-22, 24-27, 29-44, 46-49 and 51 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,998,695 to Roe, et al. ("Roe"). Applicant submits that the currently amended claims traverse the Examiner's grounds for rejection for at least the reasons set forth below.

With respect to claims 1-3, 9-12, 14-17, 19, 21, 22, 24-27, 29, 31-35, 41-44 and 46-49, the Examiner alleges that Roe discloses all the elements of the claimed invention. Office Action, page 3. With respect to independent claims 1, 19, 29 and 33 (from which the other claims depend), Roe discloses an absorbent article comprising a topsheet that may be composed of a hydrophobic material. Roe states that "[i]f the topsheet 24 is made of a hydrophobic material, preferably at least the upper surface of the topsheet 24 is treated to be hydrophilic." Roe, col. 6, ll. 4-6. As the basis for the rejection, the Examiner alleges that the upper surface of the topsheet of Roe may be treated to be hydrophilic, while the lower surface remains untreated and therefore the topsheet is selectively-permeable. Office Action, page 3. However, Roe fails to disclose topsheet that has a hydrophilic treatment on only *a portion of a surface* of the topsheet.

In contrast to Roe, the presently amended claims 1, 19, 29 and 33 recite an absorbent article comprising a selectively permeable topsheet that has a hydrophilic treated zone and a hydrophobic non-treated zone, where the hydrophilic treated zone corresponds to a *portion* of a surface of the topsheet defined by an area that corresponds to a predetermined insult point. Support for these amendments is found within the specification and Figures. One of ordinary skill in the art would understand from the description in the specification and from the representation in the Figures, that the at least one treated hydrophilic zone on the selectively permeable topsheet corresponds to a *portion* of the surface of the topsheet, and not an entire surface of the topsheet. Indeed, these descriptions do not make sense if read as a description of a surface of the topsheet rather than a portion of the surface. For example, on page 15, lines 21-24, the inventor states: "a hydrophilic zone 200 is shown being located on the topsheet 40

inward of the front edge 100 and positioned centrally between the two inner gathers 2a and 2b, as well as the outside edges of the absorbent core, and corresponding to a female insult point." This and other similar descriptions clearly direct one's attention to a specific, discrete, centrally-located portion of a surface of the topsheet. Figures 1-5 provide further support for this assertion, for, upon review of the figures, one would clearly understand that the hydrophilic zone(s) depicted in the drawings refers to a portion of a surface of a topsheet, rather than an entire surface of the topsheet.

Further, in the present invention, the hydrophilic zone does not correspond to it just any portion of a surface of the topsheet that is treated to be hydrophilic. Rather, the inventor discloses that the hydrophilic treatment corresponds to a predetermined insult point, or plurality of predetermined insult points, while the remainder of the topsheet remains untreated and hydrophobic (*see*, for example, page 15, lines 21-24, and page 17, lines 7-12, and corresponding FIGS. 1 and 2). The inventor has carefully measured and disclosed the precise size and location of insult points for both male and female babies (*see* FIGS. 6 and 7, and the paragraph bridging pages 24-25) relative to the longitudinal and lateral axes of the absorbent article. The claimed dimensions that recite the location and size of the hydrophilic treated zone correspond to these measured insult points. The inventor has discovered that providing a hydrophilic treated zone on a portion of a topsheet that corresponds to the insult point(s) on the absorbent article, produces the unexpected benefits of improving leakage protection of the absorbent article, while also improving the cost-efficiency of the absorbent article. Page 13, lines 15-19.

Roe fails to disclose an absorbent article with a selectively permeable topsheet that comprises at least one treated hydrophilic zone, and at least one non-treated hydrophobic zone, where the treated hydrophilic zone corresponds to a portion of a surface of the topsheet that is defined by an area that corresponds to a predetermined insult point. As such, Roe fails to anticipate amended independent claims 1, 19, 29 and 33. Claims 2-3, 9-12, 14-17, 21, 22, 24-27, 31-32, 34-35, 41-44 and 46-49 depend from one of these independent claims and therefore include all of the features and limitations of

the base claims. Accordingly, for at least the same reasons, Roe also fails to anticipate dependent claims 2-3, 9-12, 14-17, 21, 22, 24-27, 31-32, 34-35, 41-44 and 46-49.

Pertaining to claims 3-9, 19-20 and 35-41, the Examiner further alleges that “[t]he treated hydrophilic zone of Roe comprises a surfactant (col. 6, lines 1-14) and a skin-wellness substance (col. 6, lines 32-53).” Office Action, page 3. A closer reading of the specification in Roe would reveal that the lotion composition referred to as a skin-wellness substance, is “a *hydrophobic* lotion composition” (Roe, col. 6, ll. 27-28, emphasis added), and not a hydrophilic treatment, as recited in the present invention. Further, the hydrophobic lotion composition is an *alternative* to the hydrophilic treatment, for instance, when it is preferred for the topsheet material to be hydrophobic, and *not* hydrophilic. *Id.* at col. 6, ll. 22-26. In contrast to Roe, the present invention recites an absorbent article with a topsheet that has at least one treated *hydrophilic* zone that comprises a skin-wellness substance. Roe fails to disclose the claimed feature, and therefore fails to anticipate claims amended claims 3-9, 19-20 and 35-41.

With respect to claims 10-11, 15, 17, 19, 25, 27, 42-43, 47 and 49, the Examiner comments that “Roe discloses the treated hydrophilic zone is defined by an area that corresponds to a predetermined insult point that includes the central region and a male and female insult point in that the entire upper surface of the topsheet comprises the predetermined insult point.” Office Action, pages 3-4. As discussed above, Roe discloses a topsheet that has been treated on one surface to be hydrophilic, but does not disclose a selectively permeable topsheet where only a *portion* of a surface of the topsheet is treated to be hydrophilic. In contrast to Roe, the independent claims 1, 19, 29 and 33 have been amended to recite that the treated hydrophobic zone corresponds to a portion of a surface of the topsheet that is defined by an area that corresponds to a predetermined insult point. The descriptions of the “predetermined insult points” of the diaper, as provided in the specification and in the Figures, refer to a portion of a surface of the topsheet rather than an entire surface. In addition the inventor provides a test method and results, whereby the inventor has carefully measured and disclosed the

location and distribution of the insult points for male babies and for female babies. Figs. 6-7 and pages 24-28. "In particular, Fig. 6 shows the results of the insult points study for male and female babies as a function of gender and distance from the diaper fold in centimeters (cm)." Page 24, lines 17-19. The measurements are in terms of i, j coordinates, where i is the longitudinal coordinate, j is the transverse coordinate, and the fold of the diaper is 0,0 (page 24, line 20). As shown in Figure 6, the insult point for male babies is further forward than the insult point for female babies (10.3 cm, and 5.6 cm average, respectively). Further, the inventor specifies preferred locations for the insult points in terms of shape, width and length, for example on page 26 of the specification, at lines 9-11: "[p]referably, the hydrophilic zone is an approximately oval shaped area of about 118 mm to about 144 mm in width at the widest portion and about 260 mm to about 407 mm in length at the longest portion." In disclosing the insult points as such, the inventor is teaching insult points that correspond to discrete portions of the body-facing surface of an absorbent article. The inventor has discovered that providing a hydrophilic treated zone on a portion of a topsheet that corresponds to the insult point(s) on the absorbent article, produces the unexpected benefits of improving leakage protection of the absorbent article, while also improving the cost-efficiency of the absorbent article. Page 13, lines 15-19. Roe fails to disclose a selectively permeable topsheet comprising at least one treated hydrophilic zone and at least one non-treated hydrophobic zone, where the treated hydrophilic zone corresponds to a *portion* of a surface of the topsheet defined by an area that corresponds to a predetermined insult point, as recited in the amended claims of the present invention. Therefore, Roe fails to anticipate claims 10-11, 15, 17, 19, 25, 27, 42-43, 47 and 49.

With respect to claims 4 and 36, the examiner alleges that "the skin wellness substance is a substance effective, or perceived as being effective in providing skin protection, skin care, skin improvement, or any combination thereof." Office Action page 4. Claims 4 and 36 indirectly depend from independent claims 1 and 33, respectively, and as such, contain the features and limitations of the base claim. As

discussed above, amended independent claims 1 and 33 are not anticipated by Roe because Roe fails to disclose an absorbent article with a selectively permeable topsheet that comprises at least one treated hydrophilic zone, and at least one non-treated hydrophobic zone, where the treated hydrophilic zone corresponds to a portion of a surface of the topsheet defined by an area that corresponds to a predetermined insult point. Accordingly, for at least the same reasons, the applicant submits that claims 4 and 36 are also not anticipated by Roe.

The Examiner alleges that "as to claims 5, 8, 20, 37, 40 and 51 Roe discloses the skin-wellness substance is selected from the claimed group of materials." Office Action, page 4. Claims 5 and 8, indirectly depend from claim 1, claim 20 depends from independent claim 19, and claim 37 and 40 depend directly from independent claim 33, and therefore include all the features and limitation of the base claims from which they depend. As discussed above, independent claims 1, 33 are not anticipated by Roe because Roe fails to disclose an absorbent article with a selectively permeable topsheet that comprises at least one treated hydrophilic zone, and at least one non-treated hydrophobic zone, where the treated hydrophilic zone corresponds to a portion of a surface of the topsheet defined by an area that corresponds to a predetermined insult point. The applicant submits that for at least the same reasons, Roe also fails to anticipate dependent claims 5, 8, 20, 37 and 40. Claim 51 of the present invention recites a composition in an absorbent article for providing leak protection and improved skin wellness comprising a skin wellness substance and an amount of surfactant sufficient for rendering substantially hydrophilic an inherently hydrophobic material. See the argument presented above regarding a *hydrophilic* treatment vs. a *hydrophobic* lotion composition. Roe fails to disclose a composition comprising a skin-wellness substance in addition to an amount of surfactant sufficient for rendering substantially hydrophilic an inherently hydrophobic material. Accordingly, Roe fails to anticipate claim 51.

With respect to claims 6, 7, 38 and 39, the Examiner alleges that "Roe incorporates by reference suitable skin-wellness substances include Aloe and Vitamin E

(col. 14, lines 43-47 refers to Roe USPN 5609587, which lists Aloe and Vitamin E as components of a skin-wellness substance col. 23, lines 28-44)." Office Action, page 4. Claims 6 and 7 depend from independent claim 1, and claims 38 and 39 depend from independent claim 33. As discussed above, amended independent claims 1 and 33 are not anticipated by Roe because Roe fails to disclose an absorbent article with a selectively permeable topsheet that comprises at least one treated hydrophilic zone, and at least one non-treated hydrophobic zone, where the treated hydrophilic zone corresponds to a portion of a surface of the topsheet defined by an area that corresponds to a predetermined insult point. The applicant submits that for at least the same reasons, Roe also fails to anticipate dependent claims 6, 7, 38 and 39.

With respect to claim 30, the Examiner alleges that "the garment of Roe further comprises first and second leg gathers Figure 2." Office Action, page 4. Claim 30 depends from independent claim 29, and therefore includes all of the features and limitations of the independent claim. As discussed above, amended claim 29 is not anticipated by Roe because Roe fails to disclose an absorbent article with a selectively permeable topsheet that comprises at least one treated hydrophilic zone, and at least one non-treated hydrophobic zone, where the treated hydrophilic zone corresponds to a portion of a surface of the topsheet defined by an area that corresponds to a predetermined insult point. Accordingly, the applicant submits that for at least the same reasons, Roe also fails to anticipate dependent claim 30.

The foregoing claim amendments clarify the subject matter of the invention and are not made for reasons of patentability. No new matter has been submitted by the aforementioned amendments. In view of the claim amendments and the foregoing arguments, applicant respectfully requests reconsideration and allowance of pending claims 1-12, 14-17, 19-22, 24-27, 29-44, 46-49 and 51.

B. Paul, et al. (6,217,890)

Claims 51-52 are rejected under U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,217,890 to Paul, et al. ("Paul"). Applicant respectfully submits that the

amended claims traverse the Examiner's grounds for rejection for at least the following reasons.

With respect to independent claim 51, the Examiner alleges on page 4 of the Office Action that:

Paul discloses a composition in an absorbent article for providing leak protection and improved skin wellness comprising (Abstract and col. 10, lines 56-59): an amount of surfactant sufficient for rendering substantially hydrophilic an inherently hydrophobic material comprising nonwoven fibers or films (col. 13, lines 22-54); and a skin wellness substance selected from the claimed materials (col. 13, line 55 through col. 14, line 20).

Paul discloses two different treatments to be used on a topsheet. The first is disclosed at column 13, lines 37-38: "the topsheet 22 may be surface treated with... a surfactant mixture." And further, "the surfactant may also include additional ingredients such as aloe." Paul, col. 13, ll. 47-48. Amended claim 51 of the present invention recites a aerosolizable composition that provides leak protection and improved skin wellness, comprising an amount of surfactant sufficient for rendering substantially hydrophilic an inherently hydrophobic material, and a skin wellness substance. Support for this amendment may be found on page 32, lines 4-5, where the inventor discloses that the preferable method of applying this composition involves aerosolizing. While Paul discloses a composition that comprises a surfactant and aloe, Paul does not disclose an aerosolizable composition comprising a surfactant and aloe. Paul similarly fails to disclose a method whereby the composition is aerosolized. As such, Paul fails to anticipate claims 51 and 52.

Paul also discloses a separate lotion formulation: "[t]he topsheet 22 of the absorbent article of the present invention may further include a lotion formulation on the outer bodyfacing surface thereof. The lotion formulation may generally include an emollient, a wax and, optionally, a viscosity enhancer." Paul, col. 13, ll. 55-59. While Paul is silent to the hydrophobic or hydrophilic properties of this lotion formulation, one of ordinary skill in the art would recognize that the description of the components

and qualities of the lotion formulation are consistent with a hydrophobic, and not a hydrophilic composition. For instance, "[t]he emollients act as lubricants to reduce the abrasiveness of the topsheet and, upon transfer to the skin, help to maintain the soft, smooth, and pliable appearance of the skin." Paul, col. 13, line 66 - col. 14, line 2. Paul discloses suitable emollients, which include oils, glycerol esters, etc, at column 14, lines 2-20. One would recognize that emollients, including those disclosed in Paul, are inherently hydrophobic. Paul discloses that the wax component of the lotion formulation "primarily functions as an immobilizing agent for the emollient... The wax may further function as an emollient, occlusive agent, moisturizer, barrier enhancer and combinations thereof." Paul, col. 14, ll. 32-43. Paul discloses suitable waxes at column 14, lines 44-63. One of ordinary skill in the art would also recognize that waxes, including waxes that function as described in Paul, are inherently hydrophobic. In addition, Paul discloses that additional ingredients (including surfactants) that may be included in the lotion, as described in column 15, line 32 through column 16, line 18. However, none of these additional ingredients are added to render the lotion formulation hydrophilic. In fact, Paul discloses that "[a]n important property of the lotion formulations... is their ability to remain on the surface of the topsheet and their resistance to migration into the article such that they can readily be transferred to the wearer's skin." Paul, col. 16, ll. 19-23. One skilled in the art would recognized that this description is consistent with a hydrophobic substance, rather than a hydrophilic substance. In addition, Paul fails to teach that this second lotion composition is aerosolizable. In direct contrast to Paul, the present amended claims recite an aerosolizable composition in an absorbent article for providing leak protection and improved skin wellness comprising a skin wellness substance as well as an amount of surfactant sufficient for rendering the substantially hydrophilic an inherently hydrophobic material. The applicant submits that for at least these reasons, Paul fails to anticipate claims 51 and 52. Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection and allow pending claims 51 and 52.

Rejections under 35 U.S.C. § 103

To establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings, (2) there must be a reasonable expectation of success, and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP § 2142. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Applicant respectfully submits that the burden of establishing a *prima facie* case of obviousness has not been met by the Examiner in this case. Moreover, even if a *prima facie* case of obviousness was established, it would be rebutted by secondary evidence of nonobviousness.

A. Roe, et al. (5,998,695)

Claims 13, 18, 23, 28, 45 and 50 are rejected under U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,998,695 to Roe, et al. ("Roe"). The applicant respectfully submits that the amended claims traverse the examiner's rejection for at least the following reasons.

More specifically, on page 5 of the Office Action, the Examiner alleges that:

Claims 13, 18, 23, 28, 45, and 50 recite length and width dimensions for the treated hydrophilic zone. It is obvious Roe has transverse and longitudinal dimensions of the topsheet (Figure 2) however Roe does not specifically disclose the dimensions. It is old and well known in the art to provide an insult area of a topsheet with an oval configuration. It would have been an obvious matter of design choice to provide the topsheet and insult zones of Roe with the claimed dimensions, since such a modification would have been a mere change in the size of a component."

As discussed above, Roe fails to teach or suggest an absorbent article with a selectively permeable topsheet that comprises at least one treated hydrophilic zone, and at least one non-treated hydrophobic zone, where the treated hydrophilic zone corresponds to a

portion of a surface of the topsheet, as recited in the amended claims 1, 19 and 33 of the present invention. Claims 13, 18, 23, 45 and 50 depend from one of independent claims 1, 19 and 33, and therefore include all of the features and limitations of the independent claims. As such, Roe fails to teach or suggest all of the elements of claims 13, 18, 23, 45 and 50, and therefore does not support a *prima facie* case of obviousness.

Furthermore, the Applicant submits that while insult points have existed merely as a result of anatomical disposition, it is not an obvious matter of design choice to treat a topsheet to be hydrophobic only over the discrete area that corresponds to the predetermined insult point or plurality of insult points, while the remainder of the surface of the absorbent article remains hydrophobic. One of ordinary skill in the art would not expect a successful result, because reducing the hydrophilic zone limits the regions where bodily fluids will be more rapidly absorbed into the absorbent core of the article. The inventor has discovered, however, that by providing a hydrophilic treated portion on a topsheet that corresponds to the insult point(s) on the absorbent article produces the unexpected benefits of improving leakage protection of the absorbent article, while also improving the cost-efficiency of the absorbent article. The measurements recited in the claims correspond to the precise location of the actual insult points for male and female babies, based on careful measurements of diapers that have been worn and by babies. The applicant therefore submits that in light of Roe, it is not obvious to one skilled in the art to provide an absorbent article with a selectively permeable topsheet that has at least one treated hydrophilic zone that corresponds to an insult point or plurality of insult points. As such, Roe does not support a *prima facie* case of obviousness. Accordingly, for the aforementioned reasons, Applicant respectfully requests that the Examiner reconsider and withdraw these rejections and allow pending claims 13, 18, 23, 28, 45 and 50.

CONCLUSION

For at least the reasons outlined above, Applicant respectfully submits that the application as amended is in condition for allowance. Entry of the amendments and favorable reconsideration and allowance of the pending claims are respectfully solicited. Should there be anything further required to place the application in better condition for allowance, Examiner Stephens is invited to contact Applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,
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Dated: October 21, 2003

Attachment

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APPENDIX

Amended Replacement Drawings

To Replace Figures 1 - 5

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TC 3700 MAIL ROOM